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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,880

04/14/2004

Douglas P. Lynch

05-00634-02

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06/25/2007

ADVANCED BIONICS CORPORATION
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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

2615

MAIL DATE

DELIVERY MODE

06/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/823,880

Applicant(s)

LYNCH ET AL.

Examiner

HUYEN D. LE

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16 is/are rejected.
- 7) ☒ Claim(s) 11-15 is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/15/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 1-16 in the reply filed on 4/6/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear if the cochlear implant headpiece in claim 11 is the same with the headpiece in claim 9.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country; more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Zilberman et al. (U.S. patent 5,824,022).

Regarding claims 1-2 and 5, Zilberman teaches an apparatus that comprises an assistive listening device cap (30) and data communication electronics (102, 106, 108, 109), wherein the assistive listening device cap (30) is configured to be capable of mechanically attaching to the exterior surface of a cochlear implant headpiece (34, see figures 2, 3A, 3B and 5), and wherein the data communication electronics are configured to communicate with corresponding communication electronics within the headpiece (figure 5).

Regarding claim 3, Zilberman teaches the data communication electronics that are configured to communicate with corresponding communication electronics implanted within the head of a patient with impaired hearing (figure 5 and see the text for figures 1 and 5).

Regarding claim 4, Zilberman teaches the data communication electronics that are configured to communicate with the communication electronics of the headpiece through direct electrical contact (figures 2, 3A, 3B, 5).

Regarding claims 5-6, Zilberman teaches the data communication electronics that are configured to communicate with corresponding communication electronics through the wireless signals or a conductive wire as claimed (figures 1 and 5).

Regarding claim 7, Zilberman teaches a primary battery (107) within the assistive listening device as claimed (figure 5).

Regarding claim 8, Zilberman teaches the assistive listening device cap that is configured to be capable of mechanically attaching to the exterior surface of a cochlear implant headpiece

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by means of a magnetic force (since the magnet in the headpiece can be aligned the headpiece with a corresponding magnet in the ICS, col. 1, lines 64, 65, figures 1, 3A, 3B and 5).

5. Claims 9-10 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller (U.S. patent 6,726,618).

Regarding claims 9 and 16, as broadly claimed, Miller teaches a behind-the-ear unit (200), a headpiece (202), and an assistive listening device cap (204) configured to attach to the headpiece. As interpreted in a different manner, Miller teaches a behind-the-ear unit (200), a headpiece (100), and an assistive listening device cap (204) configured to attach to the headpiece (100) by the magnets (102, 206, see figures 1, 2 and col. 6, lines 59-63).

Regarding claim 10, Miller teaches the behind-the-ear unit including a cochlear implant speech processor (SSP in the housing 200).

Allowable Subject Matter

6. Claims 11-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HL
June 18, 2007



HUYEN LE
PRIMARY EXAMINER